

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2418 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KOHINOOR COOPERATIVE HOUSING SOCIETY LTD

Versus

STATE OF GUJARAT

Appearance:

MR AMIT M PANCHAL Petitioner
MR DP JOSHI, AGP for Respondent Nos. 1 & 2
MR PRASHANT DESAI for Respondent No. 3
MISS PU SHAH for Respondent No. 4

CORAM : MR.JUSTICE M.S. SHAH.

Date of decision: 16/06/98

ORAL JUDGEMENT

Rule. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. This petition under Article 226 of the Constitution is filed by the petitioner - Kohinoor Co-operative Housing Society Ltd. for challenging the

impugned action of allotment of land admeasuring 1340 sq. mtrs. out of final plot No. 43 in Town Planning Scheme No. 29 (Naranpura) Final in favour of respondent No. 4 Indian Oil Corporation and further to restrain the respondents from making use of final plot No. 42 for any other purpose except school and play ground.

3. It appears that the petitioner-Society was owner of total land admeasuring 11,945 sq.mtrs. in Wadaj area. As per the Town Planning Scheme, Ahmedabad No. 29 (Naranpura) Final, the petitioner - Society was allotted final plot admeasuring 8,009 sq.mtrs. (7119 + 990) in lieu of land originally held by the petitioner-Society. As per the said Town Planning Scheme, total land admeasuring 5,290 sq.mtrs. is reserved for the public purpose of school and play ground. The petitioner's grievance in the present petition is that inspite of the fact that the said land is reserved for the public purpose of school and play ground, land admeasuring 1340 sq.mtrs. is allotted by the authorities to the Indian Oil Corporation for installing and running a petrol pump. It is submitted that the said action is contrary to law and in violation of the provisions of Gujarat Town Planning & Urban Development Act, 1976.

4. In response to the notice issued by this Court, the respondents have appeared through their respective counsel. The respondents have raised a preliminary contention that the petitioner has already filed Civil Suit No. 4450 of 1996 before the City Civil Court, Ahmedabad on the same subject matter and that the present petition may not be entertained as the petitioner has already availed of the alternative remedy.

It is further submitted on merits that the total area of the land reserved for the public purpose of school and play ground was 5290 sq.mtrs. while for the purpose of petrol pump only 1340 sq.mtrs. area is allotted to Indian Oil Corporation-respondent No.4 herein in 1991. It is submitted that the land is partly used for the purpose of public which is reserved and so far as the change of use is concerned, the Corporation has already moved the proposal for variation and that the State Government has approved the change of use in principle but it was not incorporated in the varied scheme which was submitted to the Government. The Ahmedabad Municipal Corporation is advised to make fresh proposal for varying the scheme. As the Government has given necessary permission to vary the scheme, the Corporation has approved the plan for petrol pump. It is further submitted that in any view of the matter so far

as the plot reserved from the said survey number the petitioner has lost the right, title and interest as per Section 67 of the Gujarat Town Planning & Urban Development Act, 1976.

5. Having considered the rival contentions of the parties, it appears to the Court that the petitioner's challenge to allotment of 1340 sq.mtrs. of land to the Indian Oil Corporation need not be examined in this petition, as the very challenge is the subject matter of the Civil Suit No. 4450 of 1996 which is pending before the City Civil Court. Even otherwise, a categorical statement has been made in the affidavit in reply that the Government has given necessary permission in principle to vary the scheme for allotment of the aforesaid land to the Indian Oil Corporation for petrol pump and, therefore, the Ahmedabad Municipal Corporation is going to make a fresh proposal for varying the scheme.

6. As far as the apprehension expressed by the petitioner regarding the remaining part of final plot No. 42 is concerned, there is nothing in the petition to support the apprehension, but looking to the fact that the respondents have already allotted a part of the land in question for a purpose other than school and play ground in the year 1991, it appears to the Court to be just and proper to direct respondents Nos. 1, 2 and 3 not to permit any party to make use of the remaining part of land bearing final plot No. 42 in Town Planning Scheme No. Ahmedabad 29 (Naranpura) Final i.e. land admeasuring 3950 sq.mtrs. in the aforesaid plot for any purpose other than school and play ground. In case respondents Nos. 1, 2 and 3 are desirous of making any change in the Town Planning Scheme, the respondents shall not permit utilization of the aforesaid 3950 sq.mtrs. for any purpose other than school and play ground without completely following the procedure prescribed by or under the Act.

7. The petition is accordingly disposed of in terms of the aforesaid directions. Rule is made absolute to the aforesaid extent only.

June 16, 1998 (M.S. Shah, J.)